

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

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| In the Matter of |) | |
| |) | |
| Improving Public Safety Communications |) | WT Docket No. 02-55 |
| In the 800 MHz Band |) | |
| |) | |
| Consolidating the 900 MHz |) | |
| Industrial/Land Transportation and |) | |
| Business Pool Channels |) | |

To: The Commission

**COMMENTS
OF THE
AMERICAN PETROLEUM INSTITUTE**

**THE AMERICAN PETROLEUM
INSTITUTE**

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The American Petroleum Institute (“API”), by its attorneys and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (“FCC” or “Commission”), respectfully submits the following comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”)¹ in the above-captioned proceeding. The NPRM solicits comment on potential measures to remediate interference to public safety mobile radio systems operating in the 800 MHz land mobile band and on a proposal by the Personal Communications Industry Association (“PCIA”) to consolidate the Business and Industrial/Land Transportation pools in the 800 MHz and 900 MHz bands.

¹ 67 Fed. Reg. 16351 (Apr. 5, 2002).

I. PRELIMINARY STATEMENT

1. API is a national trade association representing approximately 400 companies involved in all phases of the petroleum and natural gas industries, including the exploration, production, refining, marketing and transportation of petroleum, petroleum products and natural gas. The API Telecommunications Committee is one of the standing committees of the organization's Information Systems Committee. The Telecommunications Committee evaluates and develops responses to state and federal proposals affecting telecommunications facilities used in the oil and gas industries.

2. API's Telecommunications Committee is supported and sustained by licensees that are authorized by the Commission to operate, among other telecommunications systems, facilities in the 800 MHz Private Land Mobile Radio Services ("PLMRS"). Principally licensed in the Business and Industrial/Land Transportation ("B/ILT") pools, API's members utilize these systems, for example, to support the search for and production of oil and natural gas, to ensure the safe pipeline transmission of natural gas, crude oil and refined petroleum products, to process and refine these energy sources and to facilitate their ultimate delivery to industrial, commercial and residential customers.

3. Continued operation of the private radio systems employed by petroleum and natural gas companies is absolutely essential not only to the provision of our nation's energy resources, but also to protecting lives, health and property, both in connection with the day-to-day operations of these companies, as well as during responses to emergency incidents. In fact, during a "typical" emergency incident, such as a refinery fire, API member company personnel are commonly the "first responders" on the scene, and their 800 MHz radio systems are their primary means of communications. Due to the critical importance of 800 MHz PLMRS and

other private systems to the operations of its members, API has been an active participant in all of the Commission's major rule making proceedings that have addressed the use of spectrum in the private radio services. In anticipation of this proceeding, API was involved in coordinated efforts to educate the Commission about the detrimental effects that the adoption of the "Nextel Proposal"² would have on thousands of private, industrial licensees in the 800 MHz band. API also has been involved in numerous meetings with other interested parties in an effort to formulate a "consensus" position in response to the NPRM.

II. EXECUTIVE SUMMARY

4. API agrees with the Commission that resolving public safety interference problems in the 800 MHz band is an extremely important goal. Based on the technical evidence currently available, however, API is not convinced that band realignment will achieve that goal, particularly if both public safety systems (with their existing wide front-end receivers) and systems with a cellular type architecture are to remain anywhere within the 800 MHz band. Accordingly, API implores the Commission first to develop and analyze adequate technical information before embarking on a path toward band reconfiguration, and also to consider approaches that entail the relocation of either Commercial Mobile Radio Service ("CMRS") systems or public safety licensees to a band other than 800 MHz. Moreover, API encourages the Commission to consider alternative (and potentially less costly and disruptive) approaches that do not require a large-scale reconfiguration of the 800 MHz band. One such approach would be to continue to employ the measures discussed in the *Best Practices Guide*,³ as well as any other

² See *Promoting Public Safety Communications -- Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio -- Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs* ("Nextel Proposal"), Nov. 21, 2001.

³ *Avoiding Interference Between Public Safety Wireless Communications Systems and Commercial Wireless Communications Systems at 800 MHz -- A Best Practices Guide* (see NPRM at n.18).

individualized technical measures that may be deemed effective, while amending the Commission's rules to establish specific procedures aimed at ensuring that public safety interference problems are resolved in a timely and satisfactory manner.

5. Even if some form of band realignment ultimately is deemed necessary by the Commission, Business and Industrial/Land Transportation ("B/ILT") licensees and other parties that are not causing interference to public safety systems should be allowed to remain in the 800 MHz band (with continuing primary status), and any necessary retunings or relocations within the band should be paid for in full by the interfering licensee(s) and/or Federal government funds. In response to the Commission's inquiry about the potential creation of a Critical Infrastructure Industry ("CII") allocation in the 900 MHz band, API generally favors the concept of a separate CII allocation, but opposes such a proposal to the extent that it would be adopted as part of a plan that necessitated the forfeiture by CII companies of their valuable 800 MHz spectrum and the costly, self-funded relocation to the new allocation. Finally, API believes that the consolidation of the Business and Industrial/Land Transportation pools, while possibly warranted at this time, could exacerbate the spectrum shortage already being experienced in the 800 MHz band by CII licensees and other Industrial/Land Transportation eligibles that employ 800 MHz systems for important safety-related purposes.

III. COMMENTS

A. The Commission Should Proceed With Caution and Consider Less Disruptive Alternatives to Rebanding

6. API realizes that the Commission and other interested parties in this proceeding (including API) would like to see a quick, inexpensive and effective "fix" to the public safety interference problem. Unfortunately, there does not appear to be one. Rather, there seems to be

a growing consensus among those who have at least begun to examine the technical evidence that simply rebanding existing licensees within the 800 MHz band, so as to achieve a spectral separation between public safety and cellularized systems, could reduce the amount of interference to public safety systems, but -- due to the prevalence of intermodulation interference -- certainly would not eliminate it unless the widespread replacement of public safety equipment were also to occur.⁴ Thus, were the Commission to adopt any of the 800 MHz band reconfiguration plans that it has been or will be presented with, it may find in the end that it has imposed millions of dollars in retuning and related costs, not to mention wide-scale disruption, upon countless 800 MHz band licensees *without even making a substantial dent in the interference problem*. Such a result would be a colossal disaster for all parties, not least of all public safety entities, and should be avoided at all costs.

7. In light of the apparent shortcomings of any rebanding plan that involves only the 800 MHz band, the Commission may wish to consider various options entailing the relocation to an alternative band of either public safety or interfering CMRS licensees. API believes that if appropriate alternative spectrum could be made available and allocated for CMRS licensees, the optimal solution may be to remove the interfering commercial systems from the 800 MHz band and permit the remaining, compatible users to continue operating on this spectrum.⁵ Under such an approach, public safety and other private systems would not incur any relocation or retuning

⁴ This position was espoused by representatives of Motorola, Inc. in a presentation to the Land Mobile Communications Council on April 19, 2002, and other parties who have studied the technical data appear to have reached the same conclusion.

⁵ As Nextel acknowledges in its Proposal, public safety and CMRS licensees are operating “essentially incompatible wireless system designs” in the 800 MHz band. (Nextel Proposal at page 7). Similarly, in its NPRM, the Commission recognizes that the interference problem to public safety systems is being caused by CMRS transmitters. (See NPRM at ¶ 14). There is, by contrast, no evidence that B/ILT systems are causing significant harmful interference to public safety systems, and it is API’s understanding that public safety and B/ILT licensees have co-existed in the 800 MHz band as compatible users for many years.

costs or suffer any disruption to their critical operations. The costs of relocating CMRS systems could be mitigated with public funding, if Congress considered it appropriate, and CMRS licensees would benefit, in any event, through the acquisition of (presumably) contiguous spectrum and the elimination of the existing interference problems.

8. Some parties have been advocating a “700 MHz solution,” whereby thirty megahertz of spectrum in the 700 MHz band that is slated to be auctioned for commercial use this June would instead be reallocated for public safety operations, and all 800 MHz public safety systems would be relocated to the 700 MHz band (in which public safety entities already hold a twenty-four megahertz spectrum allocation). Although this approach may well be an effective means of eliminating interference to public safety systems (and thus should not be ruled out), it should be recognized that its implementation would require the enactment of a considerable amount of Congressional legislation and the procurement of many millions or even billions of dollars in Federal (or other) funding for the relocation of public safety systems, while potentially imposing substantial disruption to public safety operations during the period of transition. Further, in light of unresolved issues involving the state of development of 700 MHz band equipment and the existence of broadcast incumbents, it is likely that the 700 MHz approach could not be implemented in the immediate term and that, as a result, interim approaches would still be required.

9. Given that no rebanding plan (including the 700 MHz approach) would be an immediate panacea and that any such plan would be costly and disruptive to at least some existing licensees, API strongly recommends that the Commission allow an interim period for the testing of non-rebanding alternatives before putting any particular rebanding plan into effect. There is a perception among some interested parties that the Commission already has concluded

that some form of rebanding is necessary and that the resolution of this proceeding is simply a matter of selecting which particular plan best meets the goals that the Commission has set forth. API strongly urges the Commission to abandon any such preconceived notions that may exist and to remain open to alternative approaches that will be presented to it in the course of this proceeding. While API understands that there may be political and other factors that seem to point toward a structural-type solution such as rebanding, API submits that -- for the reasons discussed above -- the Commission may not be serving the best interests of the public safety community or the public at large by rushing into band reconfiguration. Instead, the Commission should carefully weigh and assess the relevant technical information as it continues to become available and perhaps even conduct independent technical studies of its own; at the same time, the Commission should implement and test the merits of less disruptive measures that may in fact prove to be as or more effective than rebanding in terms of reducing interference to public safety systems.

10. To begin with, API recommends that the Commission amend Part 90 of its rules to, in essence, codify and expand upon the *Best Practices Guide* so as to establish a clear procedural mechanism for resolving public safety interference problems and to otherwise facilitate the interference resolution process. As part of these rule amendments, the Commission should: (1) set forth a specific timetable for the resolution of interference problems; (2) establish a mechanism for the centralized collection and analysis of data regarding the measures that have proven successful (or unsuccessful) in individual interference cases; and (3) provide licensees with the regulatory flexibility needed to effectuate individualized channel swaps between commercial and public safety systems (*e.g.*, waiver of service pool eligibility requirements) where considered necessary to resolve a particular interference case.

11. Further, the Commission's amended rules should clarify that a party in the 800 MHz band that is causing interference to another licensee -- whether or not the interfering party is operating within the strict confines of its license -- must take reasonable steps to remediate the interference in a timely manner.⁶ Such steps presumably would begin with consideration of the measures outlined in the *Best Practices Guide*, but could be expanded to include any other innovative situation-specific solutions that may be developed. For instance, it is possible that intermodulation interference may best be alleviated in some cases by the use of power attenuators by interfering licensees or the co-location of public safety and CMRS transmitters so as to create greater parity in terms of relative signal strength. Once enough technical information has been gathered and analyzed, the Commission also should consider whether to amend its technical rules to mandate the implementation of one or more of the "complementary solutions" discussed in paragraphs 73-79 of the NPRM (e.g., imposing more stringent out-of-band emissions limits on CMRS licensees) or any other changes that may be appropriate.

12. While the implementation of an "Enhanced Best Practices" approach such as that outlined above admittedly would impose costs upon interfering licensees, such costs could not possibly rival the costs of any rebanding alternative. In addition, such an approach clearly would be consistent with the Communications Act of 1934, as amended, ("Act") and well within the Commission's authority. Indeed, Section 303(f) of the Act explicitly directs the Commission to "[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations," including but not limited to changes to the frequencies,

⁶ In some instances, the nature and/or age of the equipment used by the party receiving interference (e.g., a wide front-end receiver) may be a contributing factor to the interference. A requirement that the interfering party seek to "fix" the problem should not be construed as obligating that party to purchase new equipment for the recipient of the interference. Rather, the parties would be expected to work together to identify less costly measures that could be employed.

authorized power or times of operation of any station where necessary to promote the public interest or serve public necessity. 47 U.S.C. § 303(f). The Act even authorizes the Commission “to suspend the license of any operator upon proof sufficient to satisfy the Commission that the licensee ... [h]as willfully or maliciously interfered with any other radio communications or signals.” 47 U.S.C. § 303(m)(1)(E).⁷ The fact that at least some of the interfering licensees may have obtained their authorizations through competitive bidding rather than site-by-site licensing would not prevent the Commission from requiring such licensees to remedy interference to public safety systems or from altering the technical standards that apply to such licensees if deemed to be in the public interest to do so. Pursuant to Section 309(j) of the Act, the use of competitive bidding by the Commission does not in any way diminish the authority of the Commission under the Act “to regulate or reclaim spectrum licenses,” nor should competitive bidding “be construed to convey any rights ... that differ from the rights that apply to other licenses within the same service that were not issued pursuant to [competitive bidding].” 47 U.S.C. § 309(j)(C) & (D). In short, regardless of whether the interfering party is a geographic or site-based licensee, the Commission can and should require that licensee to fix the interference problem that it is causing.

13. Finally, API believes that, if rebanding within the 800 MHz band ultimately is deemed necessary, the Commission should employ an approach that does not require full-scale upheaval, but that instead contemplates the retuning or relocation of licensees only where necessary to resolve particular cases of interference to public safety systems. One such rebanding plan is that which API understands is being presented in joint comments by several

⁷ See also 47 U.S.C. § 333 (prohibiting any party from willfully or maliciously interfering with or causing interference to any radio communications of any station licensed or authorized under the Act).

members of the Land Mobile Communications Council. Although, as discussed above, API has serious reservations about the effectiveness of any 800 MHz rebanding plan, it believes that a plan such as this one would be substantially less costly and burdensome than a plan such as Nextel's, while being at least, if not more, effective in reducing the amount of interference being experienced by public safety systems.

B. The Nextel Proposal is Not the Answer

14. For the reasons discussed above, API believes that the adoption of any 800 MHz band reconfiguration plan is premature at this time. However, even if reconfiguration is the route that the Commission ultimately elects to pursue, under no circumstances would the Nextel Proposal be the optimal -- or even an appropriate -- approach to employ. The Commission has stated its goal as "resolving interference with minimum disruption to existing services." (NPRM at ¶ 5). Far from furthering this goal, the Nextel Proposal would instead impose an immeasurable amount of costs and disruption on existing 800 MHz services without being any more effective in resolving interference than a host of other rebanding plans that have been or will be presented to the Commission.

15. API's primary grounds of opposition to the Nextel Proposal is its contemplated imposition upon B/ILT licensees of the unenviable choice between relocating at their own expense to alternative, potentially less desirable spectrum or remaining in the 800 MHz band with secondary status. First, API wishes to emphasize that secondary status simply is not a viable option for petroleum and natural gas company licensees in the 800 MHz band (and presumably many other B/ILT licensees). The National Telecommunications and Information Administration ("NTIA") recently recognized that the energy services provided by such companies form a part of our nation's critical infrastructure and that such companies must have

access to reliable communications capabilities to support their operations.⁸ Given the critical role that energy companies' private mobile radio systems play in promoting public safety both on a day-to-day basis and in emergency situations, it would be potentially disastrous if these systems could be rendered unavailable or inoperable when most needed (such as during a natural disaster or common emergency) due to their secondary status and the potential for interference to a co-channel (primary) public safety licensee.

16. The second alternative offered by Nextel -- *i.e.*, self-funded relocation to the 700 MHz or 900 MHz band -- is equally unacceptable. As explained in the letter that API and many other parties filed with the Commission before the NPRM was adopted, and as cited by the Commission in its NPRM, such relocation would "impose billions of dollars of costs on American businesses" and would be an "unmitigated disaster from an operational and financial standpoint for America's industrial, transportation and utility sectors."⁹ A preliminary review of the Commission's Universal Licensing Database indicates that petroleum, natural gas and petrochemical companies alone presently operate about 270 conventional systems and 165 trunked systems on B/ILT channels in the 800 MHz band. Altogether, these systems employ nearly 1200 channels. The implementation of Nextel's proposal would require the complete replacement of each and every one of these systems unless the licensee were willing to accept the unpalatable option of secondary status. While API presently does not have a precise estimate of the costs to its represented industries of such extensive system replacements, it is clear that the total would reach well into the hundreds of millions, with some individual companies alone incurring multi-million dollar losses.

⁸ See Report of the NTIA on *Current and Future Spectrum Use by the Energy, Water, and Railroad Service Industries* ("NTIA Report"), Jan. 30, 2002.

17. Nextel attempts to justify this immense cost imposition on American industry by arguing that B/ILT incumbents would benefit from their relocation from the 800 MHz band because their new channels would be subject to less interference.¹⁰ At least with respect to API member company systems, Nextel's position is, in a word, ludicrous. To API's knowledge, petroleum and natural gas licensees in the 800 MHz band have not been suffering any pervasive or substantial interference from CMRS (or other) licensees in the band. Thus, the implementation of Nextel's proposal would necessitate many costly and disruptive system replacements for these licensees with absolutely no benefit to be incurred in return.

18. The removal of B/ILT licensees from the 800 MHz band would not even create a public good or benefit, as these licensees are not causing any interference to public safety systems, and the relocation of such licensees would not in any way further the goal of remediating public safety interference.¹¹ As demonstrated by alternative 800 MHz band reconfiguration plans being presented to the Commission in this proceeding, equal or more spectral separation between public safety and cellularized systems can be achieved by allowing B/ILT licensees to remain in the 800 MHz band. While the displacement of such licensees from the band admittedly could create additional spectrum for public safety use, API respectfully submits that such an end -- while it may be desirable -- should not be achieved to the detriment of countless private internal licensees that also use their 800 MHz systems to promote public safety.

19. In sum, the Nextel proposal is not the best approach to resolving the public safety

⁹ See NPRM at ¶ 44 and n.117.

¹⁰ See NPRM at ¶ 38.

¹¹ As discussed in footnote 5, *supra*, both Nextel and the Commission acknowledge that CMRS licensees are the cause of the interference being experienced by public safety systems.

interference problem, and its adoption would impose unnecessary hardships upon American businesses. Accordingly, it should not be considered a viable option by the Commission.

C. Non-Interfering Parties Should be Compensated for any Necessary Relocations or Retunings

20. The Commission asks in its NPRM whether licensees that are required to retune or relocate as a result of band reconfiguration should be entitled to receive reimbursement for their expenses.¹² By way of precedent, the Commission discusses the relocation reimbursement procedures that were implemented in the “Emerging Technology” and 18 GHz contexts, where Fixed Service incumbent licensees have been or will be forced to relocate in order to clear spectrum for new services.¹³ API also notes that similar reimbursement principles have been employed in connection with the relocation by auction winners of incumbent site-based licensees on the “upper 200” Specialized Mobile Radio (“SMR”) service channels in the 800 MHz band.¹⁴

21. API believes that such precedent stands for the general principle that a licensee that is being forced off of its spectrum through no fault of its own (*i.e.*, it is operating in accordance with the Commission’s rules and is not causing interference to other parties) and that will not be receiving a commensurate benefit from the relocation should be fully compensated for its relocation costs. Admittedly, the present situation is not entirely analogous to the foregoing precedent because, in this instance, the spectrum would be cleared to remedy interference problems rather than to make way for new services. However, the circumstances surrounding and the predicament of incumbent licensees is precisely the same, at least with regard to B/ILT licensees that are not causing any interference to public safety operations. As a result, API

¹² NPRM at ¶ 42.

¹³ See *id.*

believes it would be grossly unfair and a departure from precedent to require such incumbents to retune or relocate their systems without compensation.¹⁵ Such compensation should be provided by the party that is responsible for the interference being remedied and/or, as further discussed below, federal funding if available.

22. There seems to be a common understanding -- with which API concurs -- that, in the event that a band reconfiguration plan is adopted, public safety licensees should not be required to incur the costs of relocating or retuning their systems to resolve the CMRS interference problem. API asks why the approach should be any different for private industrial licensees in the 800 MHz band. These licensees are not causing any interference to public safety systems, and many of these licensees, like public safety entities, utilize their systems to serve important public safety functions. If such private systems must be relocated or retuned as part of a band configuration plan to remediate public safety interference, the benefit of such upheaval would inure not to B/ILT licensees but to the public at large. Accordingly, if the interfering parties cannot or will not pay, public funding should be sought and made available in order to achieve this public good.

D. Any New Allocation for Critical Infrastructure Industries Should Not Be the Result of Forced Migration From the 800 MHz Band

¹⁴ See 47 C.F.R. § 90.699.

¹⁵ The Commission states that it “has also on occasion required licensees to bear their own cost of relocation.” NPRM at ¶ 42. In support of this proposition, the Commission cites only a 1965 decision involving the relocation of certain microwave facilities serving community antenna television systems. See Amendment of Parts 2, 21, 74, and 91 of the Commission’s Rules and Regulations Relative to the Licensing of Microwave Radio Stations Used to Relay Television Signals to Community Antenna Television Systems, 1 FCC 2d 897 (1965). In that case, however, the Commission sought to minimize the potential harmful impact on incumbent licensees by providing a transition period of *more than five years* during which incumbents could remain on their existing frequency assignments. See 1 FCC 2d at ¶¶ 31 and 39. If rebanding is required to resolve the 800 MHz public safety interference problem, such a lengthy transition period would not likely be feasible, at least with regard to relocations necessary to resolve existing interference cases. In any event, API believes that the Commission’s recent series of relocation decisions is the better conceived and more appropriate precedent to be followed in this instance.

23. In the event that the 900 MHz band were reconfigured to accommodate displaced B/ILT licensees from the 800 MHz band (as contemplated by Nextel), the Commission queries whether a portion of the 900 MHz band should be set aside for use by Critical Infrastructure Industries.¹⁶ While API has advocated and likely will continue to advocate the merits of a separate CII allocation, API does not believe that the creation of such an allocation -- whether in the 900 MHz band or elsewhere -- should come at the expense of valuable existing spectrum, such as that in the 800 MHz band, and with a requirement that CII licensees pay to relocate to the new allocation.

24. As the Commission is aware, the NTIA recently released a report on CII spectrum use, and the Commission subsequently requested comment on that report.¹⁷ API encourages the Commission to follow up on that comment request by initiating a new proceeding to consider the establishment of a new spectrum allocation for CII entities. Such an important issue merits full and thorough attention in its own right and should not be addressed merely as part and parcel of an ill-conceived plan such as Nextel's that, if adopted, would harm rather than benefit CII companies.

25. Finally, API takes issue with Nextel's definition of the CII to include only "utility companies, such as water, gas, or electric utilities."¹⁸ As the Commission recognizes, the CII have at times been defined more broadly to include "electric gas and water utilities, petroleum

¹⁶ NPRM at ¶ 37.

¹⁷ See NTIA Report (n.8, *supra*); Wireless Telecommunications Bureau Seeks Comment on NTIA Report on Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Public Notice, DA 02-361 (Feb. 14, 2002).

¹⁸ Nextel Proposal at 46.

and natural gas pipelines and railroads.”¹⁹ Similarly, the NTIA study on CII spectrum use encompassed the energy, water and railroad industries.²⁰ API believes that all energy companies, including petroleum and natural gas companies (not all of which are “utilities”), clearly make up part of the nation’s critical infrastructure and should be deemed eligible for any CII allocation ultimately adopted by the Commission.

E. The Consolidation of the Business and Industrial/Land Transportation Pools, While Potentially Warranted, Could Deplete Spectrum Needed for CII Use

26. As the Commission recognizes in its NPRM, spectrum in the Industrial/Land Transportation pool is used, at least in part, for CII communications that promote public safety.²¹ This spectrum is highly congested in many areas, and CII entities often encounter difficulties identifying available channels for new or expanded systems. The Commission’s recent auctions of the General Category, lower-80 SMR and upper-200 SMR channels for commercial use have further depleted the amount of 800 MHz spectrum potentially available for use by CII companies and other private licensees. The adoption of PCIA’s proposal to consolidate the Business and Industrial/Land Transportation pools could exacerbate the existing spectrum shortage by enabling business-only eligibles to license up what little spectrum may still be available.

27. On the other hand, API understands that the Commission’s general approach in recent years has been to promote efficient spectrum use through service pool consolidation. API also believes that, as discussed above, greater regulatory flexibility in terms of service pool eligibility may be needed in the 800 MHz band at this time in order to resolve public safety/CMRS interference cases. Thus, while API does not strictly oppose PCIA’s request, it urges the

¹⁹ NPRM at n.92.

²⁰ See n.8, *supra*.

Commission to be sensitive to the impact that pool consolidation may have on CII entities and to give weight to this factor in the coming months in the course of its efforts to follow up on the NTIA Report and assess CII spectrum needs.

IV. CONCLUSION

28. API urges the Commission -- throughout the course of this proceeding and in the face of many conflicting opinions on how best to proceed -- to remain firm to its stated goal of resolving the public safety interference problem with minimum disruption to existing services. In order to achieve this goal, the Commission should refrain from adopting any band reconfiguration plan unless and until it is assured from a technical standpoint that the plan will reduce interference enough to warrant the relocation costs and system disruption that undoubtedly will be entailed. At the same time, the Commission should remain open-minded to the possibility that the optimal solution may not even involve band reconfiguration, but could instead be an “Enhanced Best Practices” approach such as that described by API. API also believes that both fairness and precedent dictate that B/ILT licensees and other non-interfering parties should not be expected to retune or relocate their 800 MHz systems without a right to full compensation. Finally, API urges the Commission to address the important issue of a potential CII spectrum allocation in a separate proceeding and to recognize the detrimental impact that a grant of PCIA’s request to consolidate the Business and Industrial/Land Transportation pools could have on the spectrum needs of CII entities.

²¹ NPRM at ¶ 85.

WHEREFORE, THE PREMISES CONSIDERED, the American Petroleum Institute respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

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